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No. 84-282

In the Supreme Court of the United States

OCTOBER TERM, 1984

CHARLES D. KNOWLES, SR., AND
CHARLES D. KNOWLES, JR., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioners contend that the court of appeals erred in refusing to review, before trial, the district court's denial of their motions for a change of venue. The substantive question petitioners seek to present is identical to that presented in *Nardone* v. *United States*, No. 83-5266, in which certiorari was denied on November 28, 1983, and in *Eisenberg* v. *United States*, No. 83-1339, and *Dorison* v. *United States*, No. 83-1340, in which certiorari was denied on May 14, 1984.

Petitioners were charged in six counts of an eight-count indictment returned in the United States District Court for the Northern District of Florida with conspiracy to defraud the United States, in violation of 18 U.S.C. 371, and attempted income tax evasion, in violation of 26 U.S.C. 7201 (Pet. App. B2-B3). The indictment grew out of petitioners' alleged attempts to conceal, and failure to report,

income from narcotics trafficking. After their arraignment, petitioners, relying on 18 U.S.C. 3237(b), moved for a change of venue to the Southern District of Florida, the district in which they resided (Pet. App. B1, B3). The district court denied their motions (Pet. App. B1-B7), following the decisions of the Second Circuit in *In re United States (Clemente)*, 608 F.2d 76, 80-81 (1979), cert. denied, 446 U.S. 908 (1980), and of the Fourth Circuit in *In re United States (Nardone)*, 706 F.2d 494 (1983), cert. denied, No. 83-5266 (Nov. 28, 1983). Those decisions limited the applicability of Section 3237(b) to cases in which a mailing, whether or not alleged in the indictment, is the basis on which the prosecution seeks to establish venue in a district other than the district of the taxpayer's residence. Here, the court determined (Pet. App. B5) that venue in the Northern District of Florida did not appear to be predicated in any way on a mailing, but was predicated rather on the fact that all the major events of the alleged conspiracy had taken place in that district.

Upon the district court's denial of their motions, petitioners filed with the court of appeals a petition for a writ of prohibition or in the alternative for mandamus. The Eleventh Circuit denied their petitions on June 29, 1984, without opinion (Pet. App. A1).

Petitioners contend that the district court erred in denying their motion for a change of venue, making the same arguments that the petitioners in *Clemente, Nardone, Eisenberg*, and *Dorison* made. But such an interlocutory ruling in a criminal case is not appealable prior to final judgment, cf. *Flanagan* v. *United States*, No. 82-374 (Feb. 21, 1984), and the court of appeals properly refused petitioners' effort to circumvent this restriction by seeking

extraordinary relief. Petitioners have now been convicted,[1] and their convictions have not yet been reviewed by the court of appeals. They may raise their venue contentions, along with any others they may have, on appeal from the final judgments of conviction. If their convictions are affirmed, petitioners will then be able to present their contentions to this Court in petitions for writs of certiorari seeking review of final judgments against them. Review of the court of appeals' decision now would thus be premature.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

SEPTEMBER 1984

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[1]On August 23, 1984, while the instant petition was pending, petitioner Knowles, Sr., was convicted on all three counts charging him with income tax evasion; petitioner Knowles, Jr., was convicted on one of two counts charging him with income tax evasion; and both petitioners were convicted on the conspiracy count.

[2]We note that, effective July 18, 1984, Congress amended 18 U.S.C. 3237(b) to make it clear that a defendant is entitled to a transfer of a prosecution to the district of his residence only where venue in another district is based solely on a mailing to the IRS. Tax Reform Act of 1984, Pub. L. 98-369, § 162, 98 Stat. 494. See H.R. Conf. Rep. 98-861, 98th Cong., 2d Sess. 1002-1003 (1984); S. Rep. 98-225, 98th Cong., 1st Sess. 413-414 (1983).

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